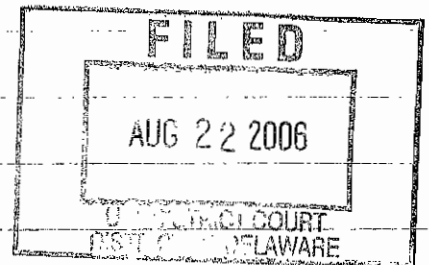


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

REGINALD HARRIS  
Petitioner,

CASE No. 1:06-cv-430  
(SLR)

v.  
THOMAS CARROLL  
Respondent,



BD scanned

MOTION TO AMEND MOTION TO "STAY AND ABEY"

Comes Now, the petitioner Reginald Harris, Pro Se,  
respectfully requesting this Honorable Court, pursuant to  
Federal Rules Civ. Proc. Rule 15(c), to AMEND OR  
permit petitioner to amend his original motion to  
"STAY-AND-ABEY."

In support of this request, petitioner submits  
the following:

1. It is plain that the central policy of Rule 15(c) - is ensuring that the non-moving party has sufficient notice of the facts and claims giving rise to the proposed amendments.

2. Petitioner wishes to incorporate additional claims of ineffective assistance of counsel, as amended to his Rule 61 Postconviction (see attached motion to amend postconviction), to Habeas Corpus Petitioner's "unexhausted claims".

3. Again, The District Court may in its discretion, allow a petitioner to amend a mixed petition by deleting the unexhausted claims, hold the exhausted claims in abeyance until the

unexhausted claims are exhausted; then allow the petitioner to amend the stayed-petition to add the "NOW-Exhausted" claims. See and

compare: Anthony v. Cambra, 236 F.3d 568, 575-578 (9<sup>th</sup> Cir. 2000).

Wherefore, the petitioner, respectfully request this Honorable Court to issue an order to "STAY" the exhausted claims, pending the exhaustion of the unexhausted claims.

Respectfully Submitted,

Reginald Harris  
Reginald Harris, Pro Se

Dated: August 14, 2006

Certificate of Service

I, Reginald Harris, hereby certify that I have served a true  
and correct cop(ies) of the attached: Motion to Amend Motion to "Stay and Abey,"  
Attached: First Motion to Amend Postconviction upon the following  
parties/person (s):

Original and Two Copies

TO: Office of The Clerk  
United States District Court  
844 N. King Street, Lockbox 18  
Wilmington, Delaware  
19801-3570

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

one (1) copy

TO: Timothy J. Donovan, Deputy A.G.  
Department of Justice  
Carvel State Office Building  
820 North French Street  
Wilmington, Delaware 19801

one (1) copy

TO: Reginald Harris "FILE"  
Delaware Correctional Ctr. MMU22-B  
1181 Paddock Road  
Smyrna, Delaware  
19977

**BY PLACING SAME IN A SEALED ENVELOPE** and depositing same in the United States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19977.

On this 14<sup>th</sup> day of August, 2006  
Reginald Harris



*Wm. Raymond Harris*  
SB# *17086* UNIT *22 B*

DELAWARE CORRECTIONAL CENTER  
1181 PADDOCK ROAD  
SMYRNA, DELAWARE 19977

WILMINGTON, DE 19

*Office of  
United States  
844 N. King  
Wilmington*



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEWCASTLE COUNTY

STATE OF DELAWARE

REGINALD HARRIS

CASE I.D. #0402010364A

Cr. A. IN04-05-1480RI, 1481RI,  
1483RI, 1484RI, 1486RI, 1487RI,  
1488RI, 1489RI

FIRST MOTION TO AMEND POSTCONVICTION

Comes now, defendant Reginald Harris, Pro Se,  
respectfully requesting this Honorable Court, pursuant to  
Superior Court Criminal Rule 61(b)(6), to permit petitioner  
to amend his Postconviction Motion to incorporate  
additional constitutional claims.

Dated: August 14, 2006

Reginald Harris  
Reginald Harris  
D.C. MHU 22-B  
1181 Paddock Rd.  
Smyrna, De. 19977

## STANDARD AND SCOPE OF REVIEW FOR INEFFECTIVE ASSISTANCE OF COUNSEL

In order to prove ineffective assistance of counsel, the defendant, in a post conviction proceeding, must demonstrate that counsel's representation "fell below an objective standard of reasonableness, and that counsel's actions were prejudicial. There is a reasonable probability that, but for counsel's unprofessional errors, the results of the trial would have been different." Skinner v. State, Del. Supr. 607 A.2d 1170 (1992), quoting Strickland v. Washington, 466 U.S. 688 (1984). In applying the Strickland standard, there is a "strong presumption that the representation





A. Ineffective Assistance of Counsel

1. Defense Counsel was ineffective by failing to appear to represent, consult and/or advise defendant at important court proceedings.

a) Defense Counsel was not present at Preliminary Hearing 03/04/04, Arraignment/Bail Hearing 04/16/04, Case Review 05/04/04, and Arraignment/Bail Hearing 06/04/04 to consult or advise defendant, as to the means by which they were to be pursued. "The Sixth Amendment right to counsel, of course, guarantees more than just a warm body to stand next to the accused during critical stages of the proceedings; an accused is entitled to an attorney who plays a role

NECESSARY to ensure that the proceedings are fair."

U.S. ex rel. THOMAS v. O'LEARY, 556 F.2d 1011, 1015 (7th Cir. 1988).

b) Had counsel been present at the preliminary hearing, defense could have contested the reliability of the

ANONYMOUS caller and the information contained in the

CALL, as to show that it was insufficient to establish

probable cause or reasonable suspicion, to detain or arrest

defendant. See Florida v. J.L., 120 S. Ct. 1375, 1379 (2000).

It is highly probable that the charges against defendant

would have been dismissed for lack of probable cause.

c) Had defense counsel been present at the Arraignment/

Bail Hearing of the amended indictment 06/07/04, she

could have made a timely objection to the Four (4)

Additional Felony counts that were included in the amendment in violation of Superior Court Criminal Rule

7(c). It is highly probable that the four (4)

additional Felony counts would have been dismissed

from the indictment, had counsel been present to

represent the defendant, and make a timely objection

and/or filed a timely motion to dismiss the unlawfully

amended indictment.

2. Trial Counsel was ineffective by failing to timely

raise claims that indictment was improperly

multiplicious in violation of the Double Jeopardy Clause

of the United States and Delaware Constitutions.



a) Defendant was arrested Feb. 17, 2004, indicted by the Grand Jury March 04, 2004, on six counts (Traf. Coco., PFDCF, PDWBPP, Poss. Drug Parap., Poss. of Marijuana, Maint. Vehicle). On May 17, 2004, three months after defendant's arrest, the state filed an amended indictment that included 2 additional PFDCF counts, 1 PLUITD NSII CS, and 1 CCDW counts, which were omitted from the original indictment.

b) This constituted a prejudicial amendment of "substance", which duly implicated both due process and double jeopardy principles of constitutionality. Superior Court Criminal Rule 7(c); U.S.C.A. Const. Amend. 5.

Defense Counsel's Failure to timely object to the

improperly multiplicitous and amended indictment, prejudiced defendant by putting him in jeopardy of being prosecuted for offenses that the original Grand Jury did not originally indict or even consider, and be sentenced multiple times for the same offense.

3. Defense counsel was ineffective by failing to timely raise claims, that the anonymous call was lacking indicia of reliability to justify a stop and frisk under the Terry standard, at Trial and Direct Appeal.

a) After the anonymous call, reported to

the Wilmington Police, that a guy sitting in a vehicle behind the police cars in the middle of the street "might possibly" have something to do with the incident that yall are investigating, officers (3 or 4) approached the vehicle and saw one person, defendant Harris, in the drivers seat of the vehicle. Apart from the anonymous call the officers had no reason to suspect the defendant of illegal conduct. The officers did not see any criminal activity or observe any unusual conduct. Without saying anything or asking any questions, one of the officers opened the drivers door, removed and ordered the defendant to the rear of the vehicle, where this



officer frisked defendant and seized a gun from his pocket. Defendant was charged under state law with a weapon and various drug offenses.

b) Trial counsel has a duty to thoroughly review the facts of the case to determine whether or not a warrantless seizure and search by the police, leading to the discovery of contraband, violates a defendant's state and federal constitutional rights against unreasonable seizure and searches. ("At a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.") see Nealy v. Cabana, 764 F.2d at 1177 (5<sup>th</sup> Cir. 1985).

Counsel did not even interview or consult with defendant about the facts of the case. Counsel never filed a discovery request, and the day defendant met counsel she was asked, by defendant, to file a motion to compel the evidence, Counsel responded with "I don't feel we need to, because I believe the state has given us everything."

C) First, the ANONYMOUS caller never said or stated that she ACTUALLY SAW defendant involved or engaged in any criminal activity. The call provided no indication of a relationship between the caller and the defendant or why the caller claimed he "might possibly" have something to do with the unrelated.

incident. In short, the call provided no legitimizing context whatsoever, and thus it failed to indicate whether it was based on personal observation or mere speculation. When suspicions arise not from any observations of police officers "but solely from a call made from an unknown location by an unknown caller," whose reputation cannot be assessed, the police must engage in suitable corroboration of the alleged criminal activity. Florida v. J.L. 120 S. Ct. at 1378. Suitable corroboration must exhibit sufficient indicia of reliability in order for an anonymous tip to provide either a reasonable suspicion of criminal activity or probable cause to



arrest or to search. See *id.* Merely providing "[a]n accurate description of a suspect's readily observable location and appearance . . . does not show that the tipster has knowledge of concealed criminal activity." *Id.* at 1379. An anonymous tip must "be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.*

Here, the officers did not have probable cause to open the car door and seize and search the defendant. Prior to entry of the vehicle, there was no reasonable suspicion that defendant was engaged in criminal activity, nor was there probable cause to believe that contraband was likely to be

Found on defendant or in the vehicle. The officers never testified to any objective facts supporting a belief that any evidence of an illegal nature would probably be found.

Again, the officers did not have reasonable suspicion or probable cause that defendant Harris was engaged in illegal activity prior to directing him to exit the vehicle. At the point that the defendant was ordered out of the car, there was no reasonable and articulable suspicion that he was engaged in criminal activity. While the state pointed to the unreliable anonymous call and the investigation of the unrelated incident, this did

not provide an objective basis for seizing the defendant.

Defense counsel was ineffective by failing to contest the reliability of the anonymous call, since there was insufficient reasonable suspicion or probable cause to support the officer's actions.

Defendant suffered prejudice as a result of counsel's ineffectiveness by the admissibility of the weapon and drugs found on defendant following the improper seizure and search. Viewed from any perspective, there was insufficient constitutional justification to support the seizure and search of the defendant or his vehicle. Reasonable counsel should have recognized the constitutional issues and



pursued them in her motion to suppress. It is highly probable that the motion to suppress would have been granted, and the weapon and drugs suppressed, based upon existing Law. The charges against the defendant would have been dismissed if the motion to suppress was granted. J.L., 120 S.Ct. 1375 (2000).

4. Defense Counsel was ineffective by failing to object adequately to, and then to appeal, the admission of testimony concerning the ANONYMOUS CALLER'S statements as "inadmissible hearsay" under Delaware Law.

a) During trial the prosecution elicited testimony from the officers regarding what was said

to the dispatcher by the ANONYMOUS caller, without the objection from defense counsel. HEARSAY.

Testimony that law enforcement officers use and rely upon for investigation and the gathering of evidence, of course, is not evidence properly to be used in the trial of a criminal case. Defense

Counsel should have objected and argued, that the testimony concerning the content of the ANONYMOUS call implicated the defendants right to confront his accuser under the Confrontation Clause of the Sixth Amendment of the United States Constitution.

The admission of and the defense counsels failure to object to this "inadmissible hearsay" form

of testimony was both erroneous and prejudicial.

And, the failure of defendant's counsel to pursue

this issue on appeal, when an effective advocate

would have, entitles him to a second chance.

Conclusion: Defendant contends that but for

counsel's unprofessional errors set forth herein,

the result of the trial would have been different,

and that the prejudice caused by the errors

(individually or cumulatively) deprived him of a

fair trial.

Wherefore, Plaintiff asks that the court

grant him all relief to which he may be

entitled in this proceeding. Movant is seeking the following:

1. Fact Finding hearing;
2. Order reversing his convictions and sentence, and ordering a new trial.

Dated: August 14, 2006

Reginald Harris  
Reginald Harris  
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